

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the CORPORATE SECURITIES LAW OF 1968 relating to foreign equity securities.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., December 17, 1999. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Current Rule 260.105.11 (10 C.C.R. Sec. 260.105.11) provides a non-issuer exemption from the qualification requirements of the Corporate Securities Law of 1968 ("CSL") for securities of foreign-country issuers where certain requirements are met. This non-issuer or "trading" exemption from the requirements of Corporations Code Section 25130 applies to: (1) those issuers currently filing with the Securities and Exchange Commission ("SEC") information and reports pursuant to Section 15(d) of the Exchange Act of 1934; (2) those securities appearing in the most recent Federal Reserve Board List of Foreign Margin Stocks (the "List"); and (3) those issuers not subject to the reporting requirements of Section 13 or 15(d) of the Securities Act of 1934 where the issuer meets certain "worldwide" issuer requirements.

The Commissioner proposes amendments to subsection (a) of Rule 260.105.11 to take into account the method used by the Board of Governors of the Federal Reserve System ("the Board") to identify foreign margin stocks.

Currently, subsection (a) of Rule 260.105.11 exempts any foreign equity security on the List of Foreign Margin Stocks published by the Federal Reserve Board (the "List") from qualification for secondary trading in this state because it does not fall within the purposes of the CSL and its qualification is not necessary or appropriate in the public interest or for the protection of investors.

Background

Since 1990, the Board has published a List of foreign equity securities eligible for margin. According to Regulation T, foreign equity securities are initially eligible for inclusion on the List if the issuer meets certain threshold criteria relating to trading volume, trading history, and market capitalization. The issuer must maintain a minimum level of trading volume and market value in order for the securities to continue to be eligible. In 1996, the Board included all foreign

equity securities on the Financial Times/Standard & Poor's World Actuaries Indices ("FTS&P Indices") on the List in reliance upon a "no-action" letter issued by the SEC. This inclusion effectively treats all foreign equity securities on the FTS&P Indices as having a "ready market" for the purposes Rule 15c3-1 of the Securities Exchange Act of 1934 (17 C.F.R. 240.15c3-1), as amended, and exempt from the qualification requirements by Rule 260.105.11.

The Board recently amended its approach for determining which foreign stocks are eligible for extension of margin credit. Effective April 1, 1998, the definition of foreign margin stock in Section 220.2 of Regulation T (12 C.F.R. 220.2) was revised to include (in addition to foreign equity securities appearing on the List), foreign equity securities deemed have a "ready market" under Rule 15c3-1 or a "no-action" letter issued by the SEC regarding its "ready market criteria".

Since the Board's definition of foreign margin stock has changed, the FTS&P Indices and any foreign equity securities with a "ready market" are no longer included on the List. Current Rule 260.105.11 may be interpreted to mean that the FTS&P Indices and other foreign equity securities formerly on the List are no longer exempt from qualification pursuant to this rule. Consequently, Rule 260.105.11 is to proposed to be amended to conform to the Board's current position with respect to foreign margin stock.

AUTHORITY

Sections 25105 and 25610, Corporations Code.

REFERENCE

Sections 25105 and 25130, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department of Corporations adopts the regulations. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS

The express terms of the proposed action may be obtained upon request from any office of the Department of Corporations. Request Document OP 16/98-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 16/98-C. As required by the Administrative Procedure Act, the Office of Policy maintains a rulemaking file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 980 Ninth Street, Suite 500. Sacramento, California.

ALTERNATIVES CONSIDERED

The Department of Corporations must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to the State: None.
- Direct or indirect costs or savings to the state or in federal funding: None.
- Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- No other nondiscretionary cost or savings are imposed on local agencies.
- Costs to Private Persons or Businesses: Insignificant or none.
- Effect on Housing Costs: None.

DETERMINATIONS

- The Commissioner has determined that the proposed regulatory action:
- Does not affect small businesses. Securities broker-dealers and investment advisers are not considered a small business under Government Code Section 11342(h)(2).
 - Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
 - Does not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.
 - Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.
 - Does reduce costs for businesses within California by eliminating unnecessary requirements and conforming standards with industry practices.

CONTACT

Comments or inquiries concerning these proposed regulation changes may be directed to WILLIAM KENEFICK, Acting Commissioner. Department of Corporations. 980 Ninth Street, Suite 500. Sacramento, California 95814. (916) 322-3553.

Dated: October 12, 1999
 Sacramento, California

WILLIAM KENEFICK
Acting Commissioner